

BEFORE THE  
Federal Communications Commission

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

### **Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations.**

**MM Docket No. 99-192; RM-9633**

**MM Docket No. 99-159**

**MM Docket No. 99-160**

MM Docket No. 99-161

MM Docket No. 99-159

**RESPONSE TO REPLY COMMENTS OF  
CENTRAL NEBRASKA BROADCASTING CO., INC.  
AND MOTION FOR LEAVE TO FILE**

Mountain West is aware the Commission has recently, in its *Report and Order* DA99-2246 (Pleasant Dale, Nebraska) (released October 22, 1999), rejected the same arguments raised by Central Nebraska. However, Mountain West is submitting this Response in the interest of providing

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helpful information and to point out that at least one of the main precedents relied on by Central Nebraska, *Breeze Broadcasting Company, Ltd.*, 8 FCC Rcd 1835 (1993) was reversed by the Commission.<sup>2</sup>

Central Nebraska relies on precedent from the now abandoned comparative hearing era as support for its claim that in a rulemaking proceeding an applicant must demonstrate its financial qualifications. The Review Board decision cited by Central Nebraska was reversed.<sup>3</sup> The Commission has in the past specifically rejected efforts within the channel allocation proceeding to consider other issues beyond technical requirements and a *bona fide* expression of interest in applying for the allotment. As noted by the Commission in *Tylertown, Mississippi*, 1999 FCC LEXIS 1150 at ¶8 (March 19, 1999), in the face of alleged misconduct, "[i]t would not be conducive to the efficient transaction of Commission business to expand the scope of an FM allotment rule making proceeding to other issues...., the allotment rule making proceeding is not the appropriate forum to resolve such an issue. Rather, in regard to the Tylertown allotment, Guaranty Broadcasting will have an opportunity to file a Petition to Deny the TRL Broadcasting Application for this allotment. [citations omitted]."

Similarly, in *Morristown, New York*, 5 FCC Rcd. 6976 (1990), the Commission rejected a "mass filer" argument that challenged the *bona fides* of an applicant's intent to build and operate a station. The opposing petitioner requested that the Commission hold the rule making proceeding

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<sup>2</sup> Mountain West recognizes that Commission rules do not contemplate submission of a Response to a Reply. However, good cause exists to consider this Response and Mountain West requests that this Response be considered and accepted. The Reply Comments of Central Nebraska should have more properly been filed as comments since its argument deals generally with Mountain West's proposals to allocate channels and not with Mountain West's comments filed in this proceeding. Indeed, it appears that Central Nebraska filed its comments in a Reply to avoid a response. The Response provides information which may be helpful to the Commission.

<sup>3</sup> Central Nebraska states at Page 5 of its Reply, "In fact, the Commission has stated that an applicant bears 'the burden of showing that [it] was able to meet all his other outstanding financial commitments and the present broadcasting financial proposal.' *Breeze Broadcasting Company, Ltd.*, 8 FCC Rcd 1835 (1993)." The Commission, however, later reversed the Review Board, specifically noting, "We do not agree, however, with the unqualified assertion that Miller [the applicant] has the burden of showing in this proceeding that he is financially qualified with respect to all of his pending applications." *Breeze Broadcasting Company, Ltd.*, 13 FCC Rcd. 22548 at ¶ 17 (November 6, 1998).

in abeyance pending an inquiry into whether the allotment petitioner had a *bona fide* intent, whether he was financially qualified, and whether he violated Commission multiple ownership and translator rules. *Id.* at ¶2. Despite the petitioner's involvement in multiple prior rule makings, in which it did not file for all the allocations requested, the Commission rejected the opposing petitioner's argument. The Commission noted that there is no "Commission rule that requires a petitioner to honor its commitment to file an application for a channel that it has requested," *Id.* at ¶4, and further noted that it was inappropriate to require petitioner to demonstrate its financial ability, an issue more appropriately raised with an actual application. *Id.* at ¶4.

Without offering any facts relating to Mountain West's financial wherewithal, financial plans or arrangements, or relating to Mr. Michael's wherewithal, Central Nebraska simply concludes, "Mountain West is woefully incapable of constructing all of the stations it has proposed to construct." The Commission has ruled that the type of speculative abuse alleged by Central Nebraska is insufficient to deny an application for allotment. *See Morristown, New York*, 5 FCC Rcd. 6976 at ¶4 (Nov. 20, 1990) ("Petitioner has stated and restated its intention to apply for the channel, if allotted, and Wireless has not presented sufficient evidence to find that petitioner's statement is not *bona fide*."); *Tylertown, Mississippi*, 1999 FCC LEXIS 1150, DA 99-531 (March 19, 1999) ("There is nothing in the record of this proceeding or any other proceeding, beyond the speculation of Guaranty Broadcasting, that would suggest that Henderson will not file an application for the Tylertown allotment.")<sup>4</sup>

Central Nebraska implies that Mountain West or Vic Michael lack the financial wherewithal to participate in the auctions for these various allocations. As noted by the Commission in its *Report*

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<sup>4</sup> Central Nebraska takes issue with Mr. Michael's \$50,000 cost estimates for applications filed for Newcastle, Wyoming; Victor, Idaho; Franklin, Idaho; and Hope, North Dakota. Central Nebraska arbitrarily claims that the figure should be \$200,000 per station. *See Reply* at n. 4. Mr. Michael, along with his brother Van Michael, have developed and constructed many new radio stations, not only for themselves, but for other operators as well. The Michael brothers have the expertise to construct stations from the ground up. Because of this, they can construct stations very cost effectively. This, coupled with new operating efficiencies, such as computerization and automated programming, make it possible to provide new FM service to communities that may not have been able to support a station until recently.

*and Order* (Pleasant Dale, Nebraska), *supra* at ¶5, the record demonstrates otherwise. Michael Radio Group (owned 50% by Vic Michael) not only submitted the requisite payments to participate in the auction for new FM channels at Driggs, Idaho; Franklin, Idaho; and Weston, Idaho; but it actively participated in numerous rounds and was the second highest bidder in each market. (See Attachment 1.) Mr. Michael has over the years been involved in many allotment proceedings and at no time was there ever a finding that any Petition he filed was anything other than bona fide. In addition to the above allocations involved in the auction, Michael Radio Group or Vic Michael petitioned to allot and then filed applications in the following communities: Channel 282A, Victor, Idaho (File No. BPH-970815MF) (settlement pending); Channel 252A, Glenrock, Wyoming (File No. BPH-971010MG) (settlement pending); Channel 261C1, Glendo, Wyoming, station KUUY(FM) (near completion); Channel 298C, Midwest, Wyoming, station KRVK(FM) (recently sold); Channel 298A, Superior, Montana station KREO (construction permit); Channel 272A, Randolph, Utah, station KAIO (construction permit assignment application granted and consummated); and Channel 261A, Forest City, Pennsylvania (settlement agreement recently filed). Mr. Michael has also over the years been the owner/operator of numerous radio stations, which is a matter of public record at the FCC.<sup>5</sup> He is also familiar with virtually every aspect of broadcast operations, including the technical, managerial and operational aspects. As noted by the Commission in the *Report and Order* (Pleasant Dale, Nebraska), "[Petitioner] has not provided any information showing that Mountain West or any corporate entity which Victor Michael is the principal is financially unable to participate in the auction for the channel, if allocated, and to construct and operate, if granted, the construction permit." *Id* at ¶5.

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<sup>5</sup> Mr. Michael began his career in radio in 1977 as an announcer and, since then, has served as chief engineer of several radio stations, and has been the owner/operator of numerous radio stations. Mr. Michael is or was the owner, or part owner, of numerous companies which owned the following stations: WBNE(FM), Benton, Pennsylvania; WJKR(FM), Muncy, Pennsylvania; WHOE(FM), Avis, Pennsylvania; WCOI/WNKI(FM), Corning, New York; KUUY/KKAZ(FM), Cheyenne, Wyoming; KFBQ(FM), Cheyenne, Wyoming; and KLEN(FM), Cheyenne, Wyoming. He currently has ownership interests in KRKI(AM) and KEZZ(FM), Estes Park, Colorado; and KTRS(FM)/KMLD(FM)/KYOD(FM), Casper, Wyoming.

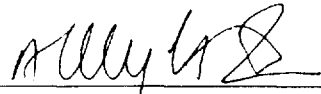
Finally, as a policy matter, requiring the Commission to investigate the financial fitness and *bona fide* intent of each petitioner for an FM allotment, even if no actual abuse by such petitioners is evident, would create a great administrative burden, both on the Commission and on the petitioners, delaying petitions for new FM allotments, and generally deterring applications. Not only has the Commission refused to involve itself in financial qualifications issues at the rule making stage, it no longer even concerns itself with financial qualifications at the application stage. In the *Commission's Implementation of §309(j) of the Communications Act / Competitive Bidding for Commercial Broadcast Stations, First Report and Order*, FCC 98-194 (released August 19, 1998), the Commission eliminated the financial certification requirement from the long Form 301 applications. The Commission noted, "adjudicating issues relating to whether the winning bidder had reasonable assurance of site availability or was financially qualified would waste the resources of the Commission and of the parties and would serve only to delay service to the public." *Id* at ¶ 99.

### **CONCLUSION**

Central Nebraska's Reply arguments should be rejected. It offers no more than speculation and unfounded conjecture to support its claims that Victor A. Michael, Jr. lacks the requisite *bona fide* intent to file for and construct stations in the communities proposed. On the contrary, the evidence and past history, including the recent active participation by Michael Radio Group in the Broadcast Auction demonstrates the *bona fides* of the requested allocations.

Respectfully submitted,

**MOUNTAIN WEST BROADCASTING**

By   
A. Wray Fitch III  
Its Counsel

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October 28, 1999

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**ATTACHMENT 1**

# FCC "Closed" Broadcast Auction #25

Market Data for Round: 35

License	Market Name	MHz	Bids	High Bidder	Rnd	Gross High Bid	Net High Bid	Credit	Bid Inc	Prev High Bidder	Round	Prev Gross	Prev Net	Credit	Min Acceptable Bid
MMFM2	Greensboro, AL	0	-	Warrior Broadcasting Inc.	10	\$213,000	\$138,450	0.35	1	James W. Lawson	9	\$194,000	\$145,500	0.25	\$234,000
MMFM4	Danville, AR	0	-	Diane C. Thoma	6	\$205,000	\$133,250	0.35	6	Michael E. Wilkins	5	\$127,000	\$82,550	0.35	\$226,000
MMFM5	Des Arc, AR	0	-	George S. Flinn, Jr.	20	\$245,000	\$245,000	-	1	Greers Ferry Broadcas	18	\$223,000	\$144,950	0.35	\$270,000
MMFM6	Earle, AR	0	-	Catherine Joanna Flinn	21	\$927,000	\$602,550	0.35	1	L.T. SIMES II AND RA	20	\$843,000	\$632,250	0.25	\$1,020,000
MMFM9	Oro Valley, AZ	0	-	Arizona Lotus Corp.	7	\$5,055,000	\$5,055,000	-	1	Hudson Communicati	6	\$4,595,000	\$4,595,000	-	\$5,561,000
MMFM14	Mendota, CA	0	-	Wilber Johnson	20	\$40,000	\$26,000	0.35	1	Roy E. Henderson	18	\$36,000	\$36,000	-	\$44,000
MMFM15	Susanville, CA	0	-	FCC	-	-	-	-	-	FCC	-	-	-	-	\$25,000
MMFM17	Truckee, CA	0	-	Todd P. Robinson	11	\$134,000	\$100,500	0.25	1	KIDD COMMUNICATI	10	\$122,000	\$122,000	-	\$147,000
MMFM19	Willows, CA	0	-	Pacific Spanish Network, In	14	\$240,000	\$240,000	-	1	ROYCE INTERNATIO	13	\$218,000	\$163,500	0.25	\$264,000
MMFM22	Glenwood Sprngs. CO	0	-	Western Slope Communica	19	\$72,000	\$72,000	-	1	Dalmatian Commun	15	\$65,000	\$65,000	-	\$79,000
MMFM24	Salida, CO	0	-	Marc Scott Communication	24	\$338,000	\$253,500	0.25	1	Rocky Mountain Medi	23	\$307,000	\$307,000	-	\$372,000
MMFM25	Wellington, CO	0	-	TSB II, Inc.	23	\$1,561,000	\$1,561,000	-	1	Tsunami Commu of N	22	\$1,419,000	\$922,350	0.35	\$1,717,000
MMFM26	Selbyville, DE	0	-	Anchor Broadcasting Limite	24	\$210,000	\$136,500	0.35	1	Galaxy Communicatio	23	\$191,000	\$124,150	0.35	\$231,000
MMFM27	Bainbridge, GA	0	-	Chattahoochee Broadcast A	5	\$24,000	\$15,600	0.35	1	Gilbert Meed Kelley, S	4	\$22,000	\$22,000	-	\$26,000
MMFM30	Agana, GU	0	-	KM Communications, Inc.	4	\$213,000	\$213,000	-	1	Inter-Island Commun	3	\$194,000	\$194,000	-	\$234,000
MMFM32	Kaau, HI	0	-	Jon A. Le Duc	14	\$293,000	\$190,450	0.35	1	Deborah Tomoye Take	13	\$266,000	\$266,000	-	\$322,000
MMFM33	Atlantic, IA	0	-	Meredith Communications,	30	\$750,000	\$750,000	-	1	Wireless Communicat	29	\$682,000	\$682,000	-	\$825,000
MMFM34	Parkersburg, IA	0	-	C.D. Broadcasting, Inc.	29	\$220,000	\$165,000	0.25	1	KM Communications,	28	\$200,000	\$200,000	-	\$242,000
MMFM35	Driggs, ID	0	-	Ted W. Austin, Jr.	26	\$162,000	\$121,500	0.25	1	Michael Radio Group	25	\$147,000	\$147,000	-	\$178,000
MMFM36	Franklin, ID	0	-	DBM Entertainment Enterpri	27	\$177,000	\$115,050	0.35	1	Michael Radio Group	26	\$161,000	\$161,000	-	\$195,000
MMFM37	Idaho Falls, ID	0	-	Ted W. Austin, Jr.	24	\$868,000	\$651,000	0.25	1	Intermart Broadcasting	23	\$789,000	\$789,000	-	\$955,000
MMFM39	Pocatello, ID	0	-	Intermart Broadcasting Poc	29	\$955,000	\$955,000	-	1	Idaho Wireless Corpor	28	\$868,000	\$868,000	-	\$1,051,000
MMFM41	Twin Falls, ID	0	-	Intermart Broadcasting Twin	22	\$838,000	\$838,000	-	1	AM 1270 Co.	21	\$762,000	\$495,300	0.35	\$922,000
MMFM44	Weston, ID	0	-	Sun Valley Radio, Inc.	18	\$63,000	\$63,000	-	1	Sun Valley Radio, Inc.	17	\$57,000	\$57,000	-	\$69,000
MMFM45	Breese, IL	0	-	KM Communications, Inc.	26	\$238,000	\$238,000	-	1	W. RUSSELL WITHE	25	\$216,000	\$216,000	-	\$262,000
MMFM46	Earlville, IL	0	-	KM Communications, Inc.	23	\$370,000	\$370,000	-	1	Woodrow D. Nelson	22	\$336,000	\$218,400	0.35	\$407,000
MMFM47	Fairbury, IL	0	-	Rainbow Radio of Livingsto	13	\$842,000	\$547,300	0.35	1	GMA Broadcasting Co	12	\$765,000	\$765,000	-	\$926,000
MMFM50	Lexington, IL	0	-	Outlook Communications, I	16	\$1,030,000	\$772,500	0.25	1	Liberty Radio II, Inc.	15	\$936,000	\$936,000	-	\$1,133,000
MMFM51	Macomb, IL	0	-	Nancy L. Foster	12	\$85,000	\$85,000	-	1	Throckmorton Broadc	11	\$77,000	\$50,050	0.35	\$94,000
MMFM53	Riley, KS	0	-	Michael D. Law	11	\$155,000	\$100,750	0.35	1	Christopher D. Miller	9	\$141,000	\$105,750	0.25	\$171,000
MMFM54	Hopkinsville, KY	0	-	Southern Broadcasting Corp	17	\$478,000	\$478,000	-	2	Ham Broadcasting Co.	16	\$398,000	\$398,000	-	\$526,000
MMFM55	Tompkinsville, KY	0	-	J. K. Whitlmore	10	\$121,000	\$121,000	-	1	Judy Crabtree	9	\$110,000	\$82,500	0.25	\$133,000
MMFM56	Mansura, LA	0	-	Amy M. Coco	18	\$100,000	\$65,000	0.35	1	Tom D. Gay	17	\$91,000	\$91,000	-	\$110,000
MMFM57	South Fort Polk, LA	0	-	WLV-TV Inc.	9	\$81,000	\$60,750	0.25	2	Alan H. Taylor	8	\$67,000	\$67,000	-	\$89,000
MMFM60	Charlevoix, MI	0	-	WBCM Radio, Inc.	24	\$150,000	\$150,000	-	1	George S. Flinn, Jr.	23	\$136,000	\$136,000	-	\$165,000
MMFM63	Manistique, MI	0	-	Todd Stuart Noordyk	30	\$196,000	\$196,000	-	1	Roy E. Henderson	29	\$178,000	\$178,000	-	\$216,000
MMFM65	Mahnomen, MN	0	-	R & J Broadcasting	13	\$117,000	\$117,000	-	1	Christopher A. Bernier	12	\$106,000	\$106,000	-	\$129,000
MMFM66	Pequot Lakes, MN	0	-	Minnesota Christian Broadc	22	\$213,000	\$138,450	0.35	1	Carol J. DeLaHunt	21	\$194,000	\$194,000	-	\$234,000
MMFM67	Sunburg, MN	0	-	Lynn C Ketelsen	14	\$57,000	\$42,750	0.25	1	Kandi Broadcasting	13	\$52,000	\$52,000	-	\$63,000
MMFM68	Bismarck, MO	0	-	Joseph W. & Donna M. Boll	10	\$311,000	\$233,250	0.25	1	David L. Shepherd	9	\$283,000	\$283,000	-	\$342,000
MMFM69	Deerfield, MO	0	-	American Media Investment	6	\$195,000	\$195,000	-	2	Harbit Communication	5	\$163,000	\$163,000	-	\$215,000
MMFM71	Vandalia, MO	0	-	Twenty-One Sound Commu	15	\$141,000	\$105,750	0.25	1	CHIRILLO ELECTRON	14	\$128,000	\$128,000	-	\$155,000
MMFM72	Clarksdale, MS	0	-	Delta Blues Broadcasting	17	\$105,000	\$68,250	0.35	1	Greg C. Shurden	16	\$95,000	\$61,750	0.35	\$116,000
MMFM73	Greenville, MS	0	-	Delta Radio, Inc.	24	\$397,000	\$397,000	-	1	MONDY-BURKE BRO	19	\$361,000	\$270,750	0.25	\$437,000
MMFM74	Grenada, MS	0	-	Delta Radio, Inc.	20	\$84,000	\$84,000	-	1	Robert E. Evans III	19	\$76,000	\$49,400	0.35	\$92,000
MMFM75	Grenada, MS	0	-	George S. Flinn, Jr.	28	\$24,000	\$24,000	-	1	Robert E. Evans III	27	\$22,000	\$14,300	0.35	\$26,000

**FCC Closed Broadcast Auction**  
**Round Results, High Bids**  
**Auction ID: 25**  
**Round No.: 15**



**Date of Report: 10/5/99 10:02 Eastern Time**

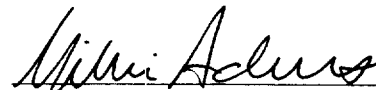
Market No	Freq Block	License Description	Round of High Bid	FCC Account Number	Name	Date/Time of Bid	Min Bid Accepted	Number of Bids	Net Bid Amount	Gross Bid Amount
<b>FM Radio</b>										
FM32	- Keaau, HI		14	0252031438	Jon A. Le Duc	10/4/99 15:58:53	\$322,000	0	\$190,450	\$293,000
FM33	- Atlantic, IA		15	0251235063	Meredith Communications, L.C.	10/5/99 9:01:52	\$230,000	1	\$209,000	\$209,000
FM34	- Parkersburg, IA		15	0251820021	C.D. Broadcasting, Inc.	10/5/99 9:02:11	\$77,000	1	\$52,500	\$70,000
FM35	- Driggs, ID		15	0251612322	Ted W. Austin, Jr.	10/5/99 9:49:34	\$69,000	1	\$47,250	\$63,000
FM36	- Franklin, ID		15	0252219157	DBM Entertainment Enterprises, Ir	10/5/99 9:07:17	\$110,000	1	\$65,000	\$100,000
FM37	- Idaho Falls, ID		15	0251612322	Ted W. Austin, Jr.	10/5/99 9:49:34	\$539,000	1	\$367,500	\$490,000
FM39	- Pocatello, ID		15	0251502207	Idaho Wireless Corporation	10/5/99 9:00:24	\$539,000	1	\$490,000	\$490,000
FM41	- Twin Falls, ID		15	0251952085	AM 1270 Co.	10/5/99 9:03:27	\$630,000	1	\$372,450	\$573,000
FM44	- Weston, ID		15	0251120561	Michael Radio Group	10/5/99 9:41:20	\$52,000	1	\$47,000	\$47,000
FM45	- Breese, IL		15	0251336448	KM Communications, Inc.	10/5/99 9:11:04	\$101,000	2	\$92,000	\$92,000
FM46	- Earlville, IL		15	0251108254	Woodrow D. Nelson	10/5/99 9:04:14	\$189,000	2	\$111,800	\$172,000
FM47	- Fairbury, IL		13	0251540531	Rainbow Radio of Livingston Cour	10/4/99 13:30:34	\$926,000	0	\$547,300	\$842,000
FM50	- Lexington, IL		15	0251128364	Liberty Radio II, Inc.	10/5/99 9:02:50	\$1,030,000	1	\$936,000	\$936,000
FM51	- Macomb, IL		12	0251948334	Nancy L. Foster	10/1/99 15:30:58	\$94,000	0	\$85,000	\$85,000
FM53	- Riley, KS		11	0250028491	Michael D. Law	10/1/99 13:41:04	\$171,000	0	\$100,750	\$155,000
FM54	- Hopkinsville, KY		15	0251939113	Southern Broadcasting Corporation	10/5/99 9:01:16	\$398,000	1	\$362,000	\$362,000
FM55	- Tompkinsville, KY		10	0251629485	J. K. Whittimore	10/1/99 11:03:48	\$133,000	0	\$121,000	\$121,000
FM56	- Mansura, LA		12	0251052598	Amy M. Coco	10/1/99 15:46:31	\$91,000	0	\$53,950	\$83,000
FM57	- South Fort Polk, LA		9	0251556336	WLV-TV Inc.	10/1/99 9:02:31	\$89,000	0	\$60,750	\$81,000
FM60	- Charlevoix, MI		15	0252049585	George S. Flinn, Jr.	10/5/99 9:03:13	\$85,000	1	\$77,000	\$77,000
FM63	- Manistique, MI		14	0250737448	Todd Stuart Noordyk	10/4/99 15:37:23	\$101,000	0	\$92,000	\$92,000



**CERTIFICATE OF SERVICE**

I, Millie Adams, in the law offices of Gammon & Grange, P.C., hereby certify that I have sent this 28th day of October 1999, by first-class, postage prepaid, U.S. Mail, copies of the foregoing RESPONSE TO REPLY COMMENTS OF CENTRAL NEBRASKA BROADCASTING CO., INC. AND MOTION FOR LEAVE TO FILE to the following:

- \* John A. Karousos, Chief,  
Policy & Rules Division  
Mass Media Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W., Room 3-A266  
Washington, DC 20554
- \* Leslie K. Shapiro  
Policy & Rules Division  
Mass Media Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W., Room 3-A266  
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- Vincent A. Pepper, Esq.  
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(Counsel for Central Nebraska Broadcasting Co., Inc.)

  
\_\_\_\_\_  
Millie Adams

\* Delivered By Hand

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